

1 Honorable Marc Barreca
2 Chapter 7
3 *Ex Parte*
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9
10 UNITED STATES BANKRUPTCY COURT
11 WESTERN DISTRICT OF WASHINGTON
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14 In Re:) Case No. 13-20505
15)
16 Bobby G. Padgett, II,) EX PARTE MOTION FOR ORDER
17) APPROVING WAIVER OF DEBTOR'S
18 Debtor.) DISCHARGE AND AUTHORIZING
19) DISMISSAL OF ADVERSARY
20) PROCEEDING; DECLARATION OF
21) MARTIN L. SMITH
22)
23)
24)
25)
26)

27 The United States Trustee hereby moves the Court for an *ex parte* order (1) approving a
28 waiver of discharge herein by debtor Bobby G. Padgett, II (the "Debtor") and authorizing *ex parte*
29 dismissal of a pending adversary proceeding (the "Motion"). The Motion is made pursuant to
30 U.S.C. § 727(a)(10) and Rules 2002(f), 4004(c), and 4006 of the Federal Rules of Bankruptcy
31 Procedure, and based upon the attached Declaration of Martin L. Smith (the "Smith Decl.") and the
32 records and files herein. In support of the Motion, the United States Trustee respectfully states as
33 follows:

34 1. The Debtor filed a voluntary chapter 7 bankruptcy petition on December 2, 2013,
35 initiating the above-referenced case (the "Chapter 7 Case").
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37 2. Michael McCarty is the trustee in the Chapter 7 Case (the "Trustee").
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1 3. On March 31, 2014, the United States Trustee timely filed a complaint objecting to
2 the Debtor's discharge pursuant to 11 U.S.C. § 727, thereby initiating adversary proceeding no. 13-
3 01150 (the "Adversary Proceeding").

4 4. The Debtor is currently represented by attorney Jeffrey L. Smoot of Oles Morrison
5 Rinker & Baker LLP in the Chapter 7 Case and in the Adversary Proceeding. The Debtor has
6 discussed waiver of his discharge and its ramifications with his attorney as recited in the Waiver.

7 5. In lieu of litigating the Adversary Proceeding, the Debtor has stipulated to a waiver of
8 his discharge. A copy of the written waiver (the "Waiver") is attached hereto.

9 6. Nothing in the Waiver is intended to restrict or otherwise affect the right or ability of
10 the United States Trustee or the Trustee to administer the Chapter 7 Case including, but not limited
11 to, avoiding and/or recovering pursuant to 11 U.S.C. §§ 542, 544, 547, 548 or otherwise any
12 transfers by the Debtor.

13 7. Under the facts and circumstances herein, the United States Trustee respectfully asks
14 the relief be granted on an *ex parte* basis. In most instances where a plaintiff is seeking to dismiss a
15 complaint objecting to discharge a noticed hearing is appropriate. The reason for the notice and
16 hearing is for the Court to make sure before an action for the benefit of all creditors is dismissed that
17 the creditor-plaintiff did not receive some form of inappropriate consideration, *e.g.* a separate
18 payment on the creditor's claim, in exchange for the dismissal. In this instance, there is no such
19 concern. The United States Trustee brought the action - not a creditor - and the United States
20 Trustee is not receiving any consideration other than the waiver of discharge by the Debtor for
21 dismissing the adversary proceeding. Also, Fed.R.Bankr.P. 7041 does not on its face require a
22 noticed hearing, just that "a complaint objecting to the debtor's discharge shall not be dismissed at
23 the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons
24 as the court may direct". Here, the Trustee has no objection to seeking approval of the Waiver and
25 dismissal of the Adversary Proceeding on an *ex parte* basis. Smith Decl., ¶ 3.
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8. An order granting the requested relief is being submitted concurrently herewith.

WHEREFORE, based upon the foregoing, the United States Trustee requests that the Court enter an *ex parte* order approving the Waiver and authorizing the submission of an *ex parte* Order dismissing the Adversary Proceeding.

Dated this 18th day of November, 2014.

Gail Brehm Geiger
Acting U.S. Trustee for Region 18

/s / Martin L. Smith
Martin L. Smith, WSBA #24861
Attorney for United States Trustee

DECLARATION OF MARTIN L. SMITH

I, Martin L. Smith, declare as follows:

1. I am a trial attorney employed by the United States Department of Justice in the Office of the United States Trustee.

2. I have personal knowledge of the facts set forth herein and, if called as a witness, I would testify competently thereto.

3. On November 18, 2014, I emailed Michael McCarty, the chapter 7 trustee in the above-captioned chapter 7 case. Mr. McCarty responded by email that he did not object to *ex parte* approval of the Waiver and to the subsequent *ex parte* dismissal of the Adversary Proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of November, 2014.

/s/ Martin L. Smith

Martin L. Smith